

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Billed Party Preference
for 0+ InterLATA Calls

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CC Docket No. 92-77

COMMENTS OF GATEWAY TECHNOLOGIES, INC.

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SUMMARY

The Commission's *Second Report and Order* successfully strikes an important and delicate regulatory balance that recognizes both the considerable security needs of inmate carriers as well as the public benefit of informing recipients of inmate calls, in real-time, of the applicable rates for these collect-only services. None of the reconsideration petitions supply any legitimate basis to exempt inmate service providers from these rate disclosure requirements.

Contrary to US West, implementing real-time rate quotes will not affect or increase inmate service rates. Instantaneous rate disclosures are technically feasible today, are already provided by inmate carrier, and protect the inmate services industry by discouraging less scrupulous providers from charging excessive rates. Gateway urges the Commission to maintain its rate quote rule and adopt CURE's clarification that the requirement necessarily includes disclosure of all surcharges and that the time used in making the price disclosure cannot be billed.

The Commission should deny the ICSPC's invitation to preempt state-imposed rate caps for local and intraLATA inmate calls. These state regulated rates provide a "benchmark" that applies healthy, competitive pressure on inmate carriers to increase their productivity and efficiency, and reduce their costs, in order to maintain profits. The Commission should not interfere with these ceilings unless and until the ICSPC is able to demonstrate -- rather than merely assert -- that these rates are not "compensatory." Moreover, if the Commission chooses to consider preemption of state rate caps, it should do so, if at all, in its ongoing payphone proceeding, where the issue is being fully addressed.

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COMMENTS OF GATEWAY TECHNOLOGIES, INC.

Gateway Technologies, Inc. ("Gateway"), by its attorneys, responds to the Commission's Public Notice¹ inviting comments on the petitions for reconsideration and clarification of the *Second Report and Order* in the above-captioned proceeding.²

Gateway was the first inmate service provider advocating the requirement that inmate carriers provide real-time rate quotes to the billed party. These capabilities are technically feasible, cost-effective and clearly in the public interest. For this reason, the Commission should reject US West's request for reconsideration of the rule requiring rate disclosures³ and should adopt the proposal by the Citizens United for the Rehabilitation of Errants ("CURE") that carriers be required to quote not only their rates, but also any applicable surcharges *before* billing commences.⁴ In addition, because it has been an active proponent of rate caps based on the larger carriers' "just and reasonable" inmate rates, Gateway recommends that the Commission, reject the

¹ Public Notice, DA 98-722 (released April 15, 1998).

² *Billed Party Preference for InterLATA 0+ Calls*, Second Report and Order and Order on Reconsideration, CC Docket No. 92-77, FCC 98-9, released January 29, 1998 ("*Second Report and Order*").

³ Petition for Clarification or Waiver or, in the Alternative, for Clarification and Reconsideration of US West, Inc. at 17 (filed April 9, 1998) ("US West Petition").

⁴ Petition for Reconsideration of CURE at 6-7 (filed April 9, 1998) ("CURE Petition").

efforts of the Inmate Calling Service Provider's Coalition ("ICSPC") to preempt state-imposed inmate service rate caps.⁵

INTRODUCTION

Gateway, a leading provider of inmate telecommunications services, has actively participated in the Commission's proceedings concerning inmate service regulation since 1990.⁶ Gateway has consistently advocated a balanced regulatory structure that recognizes both the necessary security and fraud prevention safeguards required of inmate service carriers, as well as the important public policy benefit of informing ratepayers of the rates they will be charged for accepting inmate collect calls.

The Commission's decision in this proceeding successfully strikes this important balance. The *Second Report and Order* reaffirms the Commission's traditional recognition of the "exceptional set of circumstances" faced by correctional institutions and inmate service providers in supplying the prison population with telecommunications services in a responsible manner.⁷ These exceptional circumstances, which include call blocking and monitoring, as well as other "special-security requirements applicable to inmate

⁵ Petition for Partial Reconsideration or Clarification of the ICSPC (filed April 9, 1998) ("ICSPC Petition").

⁶ See, e.g., Comments of Gateway on Further Notice of Proposed Rulemaking, CC Docket No. 90-313, (filed Jan. 22, 1991) (Gateway TOCSIA Comments); Comments of Gateway on Further Notice of Proposed Rulemaking, CC Docket No. 92-77, (filed Aug. 1, 1994) ("Gateway 1994 BPP Comments"); Letter from Glenn B. Manishin, Counsel for Gateway, to William F. Caton, FCC, CC Docket No. 92-77 (Feb. 1, 1995) (Gateway 1995 Rate Cap Proposal); Comments of Gateway, Public Notice, DA 95-473, CC Docket No. 92-77, (filed April 12, 1995) ("Gateway 1995 BPP Comments"); Comments of Gateway on Notice of Inquiry, CC Docket No. 94-158, (filed March 9, 1995) ("Gateway 1995 OSP Comments"); Reply Comments of Gateway on Notice of Proposed Rulemaking, CC Docket No. 96-128, (filed July 15, 1996) ("Gateway 1996 Telephone Reclassification Reply Comments"); Comments of Gateway on Second Further Notice of Proposed Rulemaking, CC Docket No. 92-77, (filed July 17, 1996) (Gateway 1996 BPP Comments).

⁷ *Policies and Rules Concerning Operator Service Providers*, Report and Order, 6 FCC Rcd. 2744, 2752 (1991) ("OSP Report and Order"). The "exceptional circumstances" provided the strong policy rationale for the Commission's exemption of inmate-only calling services from the unblocking and related requirements of the Telephone Operator Consumer Services Improvements Act of 1990, 47 U.S.C. § 226 ("TOCSIA").

calls,”⁸ justify the Commission’s rejection of Billed Party Preference (“BPP”) for outgoing calls by prison inmates.⁹ This finding by the Commission appropriately sanctions the necessary calling restrictions on inmate collect-only calling.

On the other side of the equation, the Commission was appropriately concerned with fashioning “additional safeguards” to protect recipients of inmate calls from “being charged excessive rates from a monopoly provider.”¹⁰ Adopting the solution initially proposed by Gateway,¹¹ the Commission has required inmate service carriers to provide real-time rate quotes by orally disclosing to the receiving party, “how, without having to dial a separate number, it may obtain the charge for the first minute of the call and the charge for additional minutes, prior to billing [the receiving party] for any interstate call from such a telephone.”¹² While Gateway believes that the problem of excessive rates in the inmate telephone services market is limited, Gateway applauds this response as a workable, pro-consumer mechanism for addressing rate concerns in inmate services. Gateway strongly agrees with the Commission that real-time rate quotes “can eliminate some of the abusive practices that have led to [inmate rate] complaints.”¹³ This regulation, will for the first time, ensure that ratepayers are informed of the charges that they are incurring before accepting for the call.

⁸ *Second Report and Order* at ¶ 57.

⁹ *Second Report and Order* at ¶ 57.

¹⁰ *Second Report and Order* at ¶ 60.

¹¹ Gateway 1996 BPP Comments at 10-12.

¹² *Second Report and Order* at ¶ 60.

¹³ *Second Report and Order* at ¶ 60.

DISCUSSION

The regulatory solution crafted by the Commission in its *Second Report and Order* appropriately meets the needs of all parties. Gateway urges the Commission to avoid any proposals that would offset this delicate, yet critical, balance. We therefore, strongly recommend that the Commission reject US West's argument that the Commission reconsider real-time inmate rate disclosures. The technical capability to provide instantaneous rate disclosures already exists and is in use today. Indeed, the Commission should adopt CURE's proposed clarification, namely that this requirement should be broadly defined to include all surcharges and should be satisfied on each call *before* any charges are imposed.

Contrary to the assertions of the ICSPC, the Commission should not interfere with state-imposed rate caps for local and intraLATA calls that are based on the dominant carrier's standard collect calling rates. There is no evidence in this proceeding to substantiate the ICSPC's claim that these rate caps deny carriers a compensatory rate. Furthermore, this issue should be addressed, if at all, in the Commission's ongoing payphone proceeding, where it has already been the subject of public comment.¹⁴ Gateway has serious concerns that the ICSPC's proposed \$0.90 *additional* surcharge to render these rates compensatory would provide a dangerous vehicle for some of the more unscrupulous inmate carriers to exploit ratepayers by charging excessive rates. This would only serve to upset the currently balanced and equitable regulatory guidelines for the inmate services industry.

¹⁴ ICSPC Petition at 2.

I. BECAUSE IMPLEMENTING REAL-TIME RATE QUOTES WILL NOT AFFECT OR INCREASE INMATE SERVICE RATES, THE COMMISSION SHOULD REJECT US WEST'S PETITION

US West charges that the Commission's mandates for inmate price disclosures inappropriately apply a "shot-gun approach to all service providers" and will simply operate to exacerbate the problem of high cost calls.¹⁵ US West proposes that the Commission address the issue of excessive inmate rates "through a case-by-case process"¹⁶ as an alternative to informing recipients about the rates they will incur by accepting an inmate collect call.

US West does not, because it cannot, dispute the important and substantial benefit that real-time rate quotes will provide to the recipients of inmate calling. Nowhere does US West challenge the benefit of providing the billed party with information about the rates for inmate collect calls. Immediate, full disclosure will not only enlighten billed parties as to the nature of the applicable charges before accepting the call, but will also provide ratepayers with important information that will allow them to make an informed judgment (consistent with their personal budgets) as to whether to accept collect calls from an inmate and, if so, how long to talk. The important public benefits of providing these ratepayers with *instantaneous* rate information cannot be overstated. For this reason, Gateway has voluntarily provided real-time rate disclosures for the past four years.

Contrary to US West's claim,¹⁷ requiring carriers to implement this capability will not lead to an increase in inmate collect calling rates. Gateway provides real-time

¹⁵ US West Petition at 17, *citing*, *Second Report and Order* at ¶ 57.

¹⁶ US West Petition at 17.

¹⁷ US West Petition at 17-18.

rate disclosures while limiting its inmate service rates to a level *at or below* those of the dominant provider's tariffed rates.¹⁸ In fact, since 1995 Gateway has advocated the imposition of rate caps for inmate collect calling based on this "benchmark" for long-distance service.¹⁹ What this practice demonstrates is that, in the inmate services context, real-time quotes are technically feasible at just and reasonable rates, *without* producing any upward pressure on carrier rates.

In lieu of rate disclosures, US West suggests two alternatives, which it admits are probably not "appropriate."²⁰ First, US West proposes that inmate carriers be allowed to implement a "generic upgrade" that would quote the "highest possible rate that the call might entail."²¹ Such a proposal is not only inappropriate, it would be ineffective in providing the billed party with accurate rate information. Artificially high rate disclosures would be of no benefit to a ratepayer trying to determine if the rate they are actually being charged is consistent with his/her personal budget.

Likewise, US West's second proposal, that recipients of inmate calls "secure actual rate quote information by dialing a separate number," would not provide the ratepayer with sufficient protection of their interests.²² Such a requirement would be too cumbersome. Inmates often must wait in line to initiate telephone calls and their access to telephones is sometimes regulated for security reasons. If the recipient had to disconnect the call with the inmate and dial another number to get rate information,

¹⁸ Gateway's local and intraLATA inmate rates are priced at or below those of the incumbent LEC's standard tariffed local calling collect rate and its long-distance inmate rates are at or below the average day-time inmate long distance rates of the three largest IXC's (AT&T, Sprint and MCI).

¹⁹ Gateway 1995 Rate Cap Proposal at 3; Gateway 1996 BPP Comments at 5-6.

²⁰ US West Petition at 18.

²¹ US West Petition at 18.

²² US West Petition at 18.

there is no guarantee that the inmate would be able to initiate a second call. Again this requirement would prove too awkward for both inmates and the recipients of their collect calls and deny these parties the benefits of instant rate disclosures.

The Commission's rate disclosure rules will also benefit the industry by discouraging some of the less scrupulous inmate providers from charging excessive rates. Gateway recommends that the Commission not tolerate any attempts to circumvent the requirement that these prices be disclosed at the time of the call without having to dial a separate number or make a formal written request for the information. Thus, the Commission should reject US West's petition and affirm its commitment to protecting ratepayers through its mandated rate disclosures.

II. THE REAL-TIME RATE DISCLOSURE SHOULD INCLUDE ALL SURCHARGES AND SHOULD BE PROVIDED BEFORE BILLING COMMENCES

Gateway concurs with CURE that the Commission's price disclosure rules should include the "requirement that all surcharges be disclosed."²³ In addition, Gateway agrees that the time used in making the price disclosure should not be billed. In fact, Gateway urges the Commission to mandate that inmate carriers implement the practice, which Gateway currently utilizes, of providing the rate quotes immediately following call branding (*i.e.*, before the called party accepts the call). If carriers were permitted to bill for the time used to provide the rate quotes, carriers might have perverse incentives to elongate the disclosure to increase the billing minutes. This would defeat the whole purpose of providing ratepayers with the price information.

²³ CURE Petition at 4.

Real-time rate disclosures will have a significant and beneficial impact on the inmate services market. Aware of the charges, the billed party may make an informed decision about whether to accept or refuse calls on the basis of whether they are affordable. Furthermore, if the billed party accepts the call, he/she will anticipate the charges, avoiding any “rate shock” at the end of the month when the bill arrives. Finally, and perhaps most significantly, the called party will now be able to tailor the length of his/her telephone conversation with an inmate depending on the rates and the ability to pay those rates. Thus, the *Second Report and Order*, by rejecting BPP and implementing real-time rate quotes, successfully balances the need to maintain prison security and toll fraud prevention safeguards through inmate telephones while ensuring that ratepayers are informed of the charges that they will incur by accepting an inmate-originated collect call.

III. THE COMMISSION SHOULD REJECT ICSPC’S INVITATION TO USE THIS PROCEEDING TO INTERFERE IN STATE-IMPOSED RATE CAPS

ICSPC’s petition stems from its argument in the Commission’s ongoing payphone proceeding²⁴ that the FCC should preempt certain state-imposed rate caps for local and intraLATA inmate calls.²⁵ According to ICSPC, state ceilings on inmate local and intraLATA calls that are based on the incumbent LECs standard 0+ collect calling service rates, fail to take into account the unique costs faced by inmate service providers, preventing these carriers from “receiving fair compensation.”²⁶ In particular,

²⁴ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act*, 11 FCC Rcd 20541 (1996) (“Payphone Order”), *recon*, 11 FCC Rcd 21233 (1996) (“Payphone Reconsideration Order”).

²⁵ ICSPC Petition at 2-4.

²⁶ ICSPC Petition at 7, citing ICSPC Comments, CC Docket No. 96-128, at 6-13.

the ICSPC contends that the Commission's refusal to "preempt state rate caps," is inconsistent with its section 276 obligations.²⁷

The ICSPC recommends that the Commission clarify several statements in the *Second Report and Order* that it contends are inconsistent with the Commission's Section 276 mandate, and will "adversely affect" the Commission's ability to "prescribe fair compensation" for inmate service providers in the payphone proceeding.²⁸

As a proposed solution to these purportedly "unfair" rate ceilings, ICSPC reiterates the same tired proposal that the Commission has rejected for the past two years. Specifically, ICSPC wants the Commission to prescribe a \$0.90 per-call inmate system element surcharge for inmate calls.²⁹ According the ICSPC, a \$0.90 surcharge is necessary to make the rates for local and IntraLATA inmate calls "compensatory."

These protestations are overstated and completely uncorroborated by the record in this proceeding. First, there is no reliable evidence that any intrastate inmate service rates are noncompensatory. While Gateway agrees that inmate carriers do incur "considerable additional costs" in providing highly specialized telephone service to inmates,³⁰ state-imposed rate ceilings based on the dominant provider's standard rates are not, as the ICSPC contends, "artificially low."³¹ Efficient inmate service carriers, even smaller resellers like Gateway, are able to recover their costs and earn a viable margin by using the incumbent's tariffed standard collect rate as the inmate services rate for local and intraLATA calls.

²⁷ ICSPC Petition at 3-4, *citing* *Second Report and Order* at ¶ 55.

²⁸ ICSPC Petition at 2.

²⁹ ICSPC Petition at 8.

³⁰ ICSPC Petition at 2.

³¹ ICSPC Petition at 3.

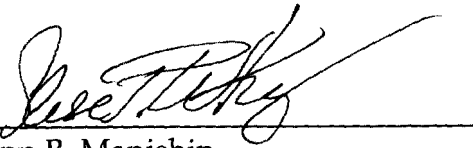
Rate caps based on the incumbent or dominant provider's tariffed collect calling rates not only allow inmate service providers to recover their costs, they also protect the integrity and competitive nature of the inmate telephone service industry. These rate ceilings benefit the industry by gleaning out unscrupulous providers seeking to gouge ratepayers, and by applying competitive pressures on inmate service carriers to increase their productivity and efficiencies to reduce their costs to maintain their profits. If the members of the ICSPC are unable to recover their costs with these rates, they should either reduce their costs or initiate a full cost case and demonstrate to the Commission that these rates are not compensatory of the carrier's reasonable costs. Given the fact that these rate ceilings are currently providing efficient inmate providers, like Gateway, a compensatory rate, the Commission should reject any proposal that would interfere with state rate ceilings, unless and until the ICSPC is able to demonstrate that these rates do not, in fact, cover their costs.

Contrary to ICSPC's contentions, the Commission has not explicitly or implicitly sanctioned noncompensatory rate ceilings in its *Second Report and Order*. The Commission has not, nor should it have, dealt with the issue of state-imposed rate caps in this proceeding. Even if the Commission were to consider imposing regulations to circumvent the state rate ceilings, it should implement any such regulations in its pending payphone proceedings, where the issue is being fully addressed. For the Commission to adopt ICSPC's proposal in the BPP docket would be inappropriate because the active parties have not had the opportunity to submit public comment on this specific issue. The Commission should not allow the ICSPC in this proceeding to re-fight the battle that it lost in the payphone proceeding.

CONCLUSION

For all these reasons, Gateway urges the Commission to reaffirm its real-time rate quote mandate and require the disclosure of all inmate rates and surcharges before billing commences.

Respectfully submitted,

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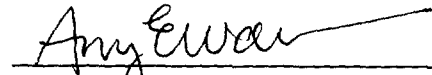
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Dated: April 30, 1998

**CERTIFICATE OF SERVICE
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I, Amy E. Wallace, do hereby certify on this 30th day of April, 1998, that I have served a copy of the foregoing document via *messenger and United States first class mail, postage prepaid, to the parties below.



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